

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

POWERBAHN, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:19-CV-01678-AT
	)	
FOUNDATION FITNESS, LLC,	)	
WAHOO FITNESS, LLC,	)	
WAHOO FITNESS HOLDINGS,	)	
LLC AND PATRICK WARNER,	)	

Defendants.

**DEFENDANTS’ MOTION FOR RECONSIDERATION OF JANUARY 29,  
2020 ORDER (DOC. 39) DENYING PLAINTIFF’S MOTION TO SEAL  
(DOC. 23), AND MEMORANDUM IN SUPPORT**

Defendants Foundation Fitness, LLC (“Foundation”), Patrick Warner (“Warner”), and Wahoo Fitness, LLC and Wahoo Fitness Holdings, LLC (“Wahoo,” and collectively with Foundation and Warner, “Defendants”), pursuant to this Court’s Order (the “Order,” Doc. 39) denying Plaintiff POWERbahn, LLC’s (“Plaintiff”) Motion to Seal (Doc. 23), hereby request reconsideration of the Order, and further request that the Court order that a redacted version of Exhibit A be filed in the publicly available Court record, stating as follows:

1. As set forth in the Order, the Court denied the Motion to Seal, but invited Defendants to seek reconsideration of that aspect of the Order. Order, pp.

5, 19. The Motion to Seal had requested the sealing of Exhibit A to Plaintiff's Response to Defendant Warner's Motion to Dismiss (Doc. 22). *See* Order, p. 5.

2. Accordingly, by way of this Motion, Defendants seek reconsideration of the Order denying Plaintiff's Motion to Seal. However, Defendants only seek to seal very limited portions of Exhibit A (Doc. 22). Specifically, Defendants request that (1) references to, and contact information for, two vendors in nine of the documents, as well as vendor component pricing information in one of the documents be sealed because such information is confidential and competitively sensitive; and (2) accordingly, a redacted version of Exhibit A (Doc. 22), attached hereto as **Exhibit A**, be filed in the publicly available Court records.

3. Defendants originally designated the documents included in Exhibit A as Confidential or Restricted – Attorney's Eyes Only pursuant to the Protective Order previously entered by the District of Nevada. *See POWERbahn, LLC v. Foundation Fitness LLC, et al.*, Dkt. 72 ¶¶ 6, 8, No. 3:15-cv-327-MMD-WGC. The protective order states that a party shall designate information as Confidential "only upon a good faith belief that the documents, information, or material contains confidential or proprietary information or trade secrets of the Party or Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents, information or material." *Id.* at ¶ 7. The Restricted – Attorneys' Eyes Only designation is more restrictive, applying

only to certain categories of information that “is likely to cause harm to the competitive position of the producing party” if disclosed. *Id.* at ¶ 8.

4. Section III.f. of this Court’s Standing Order: Guidelines to Parties and Counsel in Cases Proceeding Before The Honorable Amy Totenberg provides that a party requesting sealing of a document must show “good cause” and further states that “[g]ood cause will generally only be established where the materials (e.g., documents or testimony) contain trade secrets, personal identifying information, and sensitive commercial information, where public disclosure would result in “annoyance, embarrassment, oppression, or undue burden or expense.” *Id.* at Section III.f.i. (citing Fed. R. Civ. P. 26(c)(1)). The Standing Order further provides: “If a document contains some discrete material that is deemed confidential and subject to protection from public disclosure . . . , the Parties will be entitled to redact only those portions of the document deemed confidential. The Court cautions that only in rare cases will it be appropriate to seal an entire document from public access.” *Id.* at III.f.ii.

5. Here, upon further review of the documents attached as Exhibit A, Defendants seek only to protect and redact from the public record information that identifies two of Defendants’ vendors, and information that identifies vendor pricing information for the AC adapter component. The identity of these vendors, their employees’ contact information, and the vendor component pricing

information are not generally known but instead are confidential, and competitively sensitive. *See* Declaration of Pat Warner, Exhibit B hereto, at ¶ 3. It would place an undue burden on Defendants and likely cause harm to their respective competitive positions if this confidential vendor and pricing information became publicly available. *Id.*

6. Accordingly, Defendants respectfully: (1) submit that good cause exists to continue the sealing of this information, and (2) request that the Court enter an Order providing that this information should remain sealed, and that the document attached hereto as Exhibit A be filed in the Court's public record as Exhibit A to Plaintiff's Response to Defendant Warner's Motion to Dismiss (Doc. 22).

WHEREFORE, Defendants Foundation Fitness, LLC, Patrick Warner, and Wahoo Fitness LLC request that the Court enter an Order:

- (1) granting reconsideration, in part, of the Order, Doc. 39;
- (2) granting Plaintiff's Motion to Seal, Doc. 23, in part; and
- (3) ordering that Exhibit A hereto be filed in the Court's public record as Exhibit A to Plaintiff's Response to Defendant Patrick Warner's Motion to Dismiss, Doc. 22.

Respectfully submitted this 10<sup>th</sup> day of February, 2020.

/s/ Keith J. Grady

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**CERTIFICATE OF FONT AND POINT SELECTION AND OF SERVICE**

The undersigned hereby certifies that the foregoing has been prepared with one of the font and point selections approved by the Court and that a copy of the foregoing was electronically filed with the Clerk of the Court for the United States District Court for the Northern District of Georgia using the CM/ECF system, which will send notification of such filing to registered counsel of record as identified on the Court's Docket as of February 10, 2020.

/s/ Keith J. Grady